



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1349

Introduced 02/20/07, by Rep. Kurt M. Granberg

SYNOPSIS AS INTRODUCED:

20 ILCS 715/25
35 ILCS 5/211
35 ILCS 10/5-45

Amends the Economic Development for a Growing Economy Tax Credit Act and the Illinois Income Tax Act. Provides that a taxpayer who has been awarded a credit under the Economic Development for a Growing Economy tax credit program may sell the credit in the secondary financial markets with 100% of the proceeds of the sale by the applicant to be used to offset the costs of the project. Amends the Corporate Accountability for Tax Expenditures Act and the Illinois Income Tax Act to make corresponding changes. Effective immediately.

LRB095 09839 BDD 30050 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Corporate Accountability for Tax
5 Expenditures Act is amended by changing Section 25 as follows:

6 (20 ILCS 715/25)

7 Sec. 25. Recapture.

8 (a) All development assistance agreements shall contain,
9 at a minimum, the following recapture provisions:

10 (1) The recipient must (i) make the level of capital
11 investment in the economic development project specified
12 in the development assistance agreement; (ii) create or
13 retain, or both, the requisite number of jobs, paying not
14 less than specified wages for the created and retained
15 jobs, within and for the duration of the time period
16 specified in the legislation authorizing, or the
17 administrative rules implementing, the development
18 assistance programs and the development assistance
19 agreement.

20 (2) If the recipient fails to create or retain the
21 requisite number of jobs within and for the time period
22 specified, in the legislation authorizing, or the
23 administrative rules implementing, the development

1 assistance programs and the development assistance
2 agreement, the recipient shall be deemed to no longer
3 qualify for the State economic assistance and the
4 applicable recapture provisions shall take effect.

5 (3) If the recipient receives State economic
6 assistance in the form of a High Impact Business
7 designation pursuant to Section 5.5 of the Illinois
8 Enterprise Zone Act and the business receives the benefit
9 of the exemption authorized under Section 51 of the
10 Retailers' Occupation Tax Act (for the sale of building
11 materials incorporated into a High Impact Business
12 location) and the recipient fails to create or retain the
13 requisite number of jobs, as determined by the legislation
14 authorizing the development assistance programs or the
15 administrative rules implementing such legislation, or
16 both, within the requisite period of time, the recipient
17 shall be required to pay to the State the full amount of
18 the State tax exemption that it received as a result of the
19 High Impact Business designation.

20 (4) If the recipient receives a grant or loan pursuant
21 to the Large Business Development Program, the Business
22 Development Public Infrastructure Program, or the
23 Industrial Training Program and the recipient fails to
24 create or retain the requisite number of jobs for the
25 requisite time period, as provided in the legislation
26 authorizing the development assistance programs or the

1 administrative rules implementing such legislation, or
2 both, or in the development assistance agreement, the
3 recipient shall be required to repay to the State a pro
4 rata amount of the grant; that amount shall reflect the
5 percentage of the deficiency between the requisite number
6 of jobs to be created or retained by the recipient and the
7 actual number of such jobs in existence as of the date the
8 Department determines the recipient is in breach of the job
9 creation or retention covenants contained in the
10 development assistance agreement. If the recipient of
11 development assistance under the Large Business
12 Development Program, the Business Development Public
13 Infrastructure Program, or the Industrial Training Program
14 ceases operations at the specific project site, during the
15 5-year period commencing on the date of assistance, the
16 recipient shall be required to repay the entire amount of
17 the grant or to accelerate repayment of the loan back to
18 the State.

19 (5) If the recipient receives a tax credit under the
20 Economic Development for a Growing Economy tax credit
21 program, the development assistance agreement must provide
22 that (i) if the number of new or retained employees falls
23 below the requisite number set forth in the development
24 assistance agreement, the allowance of the credit shall be
25 automatically suspended until the number of new and
26 retained employees equals or exceeds the requisite number

1 in the development assistance agreement; (ii) if the
2 recipient discontinues operations at the specific project
3 site during the first 5 years of the 10-year term of the
4 development assistance agreement, the recipient shall
5 forfeit all credits taken by the recipient during such
6 5-year period; ~~and~~ (iii) in the event of a revocation or
7 suspension of the credit, the Department shall contact the
8 Director of Revenue to initiate proceedings against the
9 recipient to recover wrongfully exempted Illinois State
10 income taxes and the recipient shall promptly repay to the
11 Department of Revenue any wrongfully exempted Illinois
12 State income taxes; and (iv) if the recipient has sold the
13 credit in the secondary financial markets under subsection
14 (c) of Section 5-45 and the recipient defaults on its
15 obligations under the agreement, then the credit remains
16 valid in the hands of the purchaser, but the Department
17 shall contact the Director of Revenue to initiate
18 proceedings against the recipient to recover the entire
19 amount of the credit, and the recipient must promptly pay
20 to the Department of Revenue the entire amount of the
21 credit. The forfeited amount of credits shall be deemed
22 assessed on the date the Department contacts the Department
23 of Revenue and the recipient shall promptly repay to the
24 Department of Revenue any wrongfully exempted Illinois
25 State income taxes.

26 (b) The Director may elect to waive enforcement of any

1 contractual provision arising out of the development
2 assistance agreement required by this Act based on a finding
3 that the waiver is necessary to avert an imminent and
4 demonstrable hardship to the recipient that may result in such
5 recipient's insolvency or discharge of workers. If a waiver is
6 granted, the recipient must agree to a contractual
7 modification, including recapture provisions, to the
8 development assistance agreement. The existence of any waiver
9 granted pursuant to this subsection (c), the date of the
10 granting of such waiver, and a brief summary of the reasons
11 supporting the granting of such waiver shall be disclosed
12 consistent with the provisions of Section 25 of this Act.

13 (c) Beginning June 1, 2004, the Department shall annually
14 compile a report on the outcomes and effectiveness of recapture
15 provisions by program, including but not limited to: (i) the
16 total number of companies that receive development assistance
17 as defined in this Act; (ii) the total number of recipients in
18 violation of development agreements with the Department; (iii)
19 the total number of completed recapture efforts; (iv) the total
20 number of recapture efforts initiated; and (v) the number of
21 waivers granted. This report shall be disclosed consistent with
22 the provisions of Section 20 of this Act.

23 (d) For the purposes of this Act, recapture provisions do
24 not include the Illinois Department of Transportation Economic
25 Development Program, any grants under the Industrial Training
26 Program that are not given as an incentive to a recipient

1 business organization, or any successor programs as described
2 in the term "development assistance" in Section 5 of this Act.
3 (Source: P.A. 93-552, eff. 8-20-03.)

4 Section 10. The Illinois Income Tax Act is amended by
5 changing Section 211 as follows:

6 (35 ILCS 5/211)

7 Sec. 211. Economic Development for a Growing Economy Tax
8 Credit.

9 (a) For tax years beginning on or after January 1, 1999, a
10 Taxpayer who has entered into an Agreement under the Economic
11 Development for a Growing Economy Tax Credit Act is entitled to
12 a credit against the taxes imposed under subsections (a) and
13 (b) of Section 201 of this Act in an amount to be determined in
14 the Agreement. If the Taxpayer is a partnership or Subchapter S
15 corporation, the credit shall be allowed to the partners or
16 shareholders in accordance with the determination of income and
17 distributive share of income under Sections 702 and 704 and
18 subchapter S of the Internal Revenue Code. The Department, in
19 cooperation with the Department of Commerce and Economic
20 Opportunity, shall prescribe rules to enforce and administer
21 the provisions of this Section. This Section is exempt from the
22 provisions of Section 250 of this Act.

23 (b) The credit shall be subject to the conditions set forth
24 in the Agreement and the following limitations:

1 (1) The tax credit shall not exceed the Incremental
2 Income Tax (as defined in Section 5-5 of the Economic
3 Development for a Growing Economy Tax Credit Act) with
4 respect to the project.

5 (2) The amount of the credit allowed during the tax
6 year plus the sum of all amounts allowed in prior years
7 shall not exceed 100% of the aggregate amount expended by
8 the Taxpayer during all prior tax years on approved costs
9 defined by Agreement.

10 (3) The amount of the credit shall be determined on an
11 annual basis. Except as applied in a carryover year
12 pursuant to Section 211(4) of this Act, the credit may not
13 be applied against any State income tax liability in more
14 than 10 taxable years; provided, however, that (i) an
15 eligible business certified by the Department of Commerce
16 and Economic Opportunity under the Corporate Headquarters
17 Relocation Act may not apply the credit against any of its
18 State income tax liability in more than 15 taxable years
19 and (ii) credits allowed to that eligible business are
20 subject to the conditions and requirements set forth in
21 Sections 5-35 and 5-45 of the Economic Development for a
22 Growing Economy Tax Credit Act.

23 (4) The credit may not exceed the amount of taxes
24 imposed pursuant to subsections (a) and (b) of Section 201
25 of this Act. Any credit that is unused in the year the
26 credit is computed may be carried forward and applied to

1 the tax liability of the 5 taxable years following the
2 excess credit year. The credit shall be applied to the
3 earliest year for which there is a tax liability. If there
4 are credits from more than one tax year that are available
5 to offset a liability, the earlier credit shall be applied
6 first.

7 (5) Unless the credit has been sold under subsection
8 (c) of Section 5-45 of the Economic Development for a
9 Growing Economy Tax Credit Act, no ~~no~~ credit shall be
10 allowed with respect to any Agreement for any taxable year
11 ending after the Noncompliance Date. Upon receiving
12 notification by the Department of Commerce and Economic
13 Opportunity of the noncompliance of a Taxpayer with an
14 Agreement, the Department shall notify the Taxpayer that no
15 credit is allowed with respect to that Agreement for any
16 taxable year ending after the Noncompliance Date, as stated
17 in such notification. If any credit has been allowed with
18 respect to an Agreement for a taxable year ending after the
19 Noncompliance Date for that Agreement, any refund paid to
20 the Taxpayer for that taxable year shall, to the extent of
21 that credit allowed, be an erroneous refund within the
22 meaning of Section 912 of this Act.

23 (6) For purposes of this Section, the terms
24 "Agreement", "Incremental Income Tax", and "Noncompliance
25 Date" have the same meaning as when used in the Economic
26 Development for a Growing Economy Tax Credit Act.

1 (c) The Department, in cooperation with the Department of
2 Commerce and Economic Opportunity, shall prescribe rules to
3 enforce and administer the provisions of this Section. The
4 rules must include, without limitation, procedures to allow a
5 taxpayer who has been awarded the credit to sell the credit in
6 the secondary financial markets with 100% of the proceeds of
7 the sale by the applicant to be used to offset the costs of the
8 project under the agreement.

9 (Source: P.A. 94-793, eff. 5-19-06.)

10 Section 15. The Economic Development for a Growing Economy
11 Tax Credit Act is amended by changing Section 5-45 as follows:

12 (35 ILCS 10/5-45)

13 Sec. 5-45. Amount and duration of the credit.

14 (a) The Department shall determine the amount and duration
15 of the credit awarded under this Act. The duration of the
16 credit may not exceed 10 taxable years. The credit may be
17 stated as a percentage of the Incremental Income Tax
18 attributable to the applicant's project and may include a fixed
19 dollar limitation.

20 (b) Notwithstanding subsection (a), and except as the
21 credit may be applied in a carryover year pursuant to Section
22 211(4) of the Illinois Income Tax Act, the credit may be
23 applied against the State income tax liability in more than 10
24 taxable years but not in more than 15 taxable years for an

1 eligible business that (i) qualifies under this Act and the
2 Corporate Headquarters Relocation Act and has in fact
3 undertaken a qualifying project within the time frame specified
4 by the Department of Commerce and Economic Opportunity under
5 that Act, and (ii) applies against its State income tax
6 liability, during the entire 15-year period, no more than 60%
7 of the maximum credit per year that would otherwise be
8 available under this Act.

9 (c) The Department, in cooperation with the Department of
10 Revenue, must adopt rules to allow a taxpayer who has been
11 awarded a credit under this Section to sell the credit in the
12 secondary financial markets with 100% of the proceeds of the
13 sale by the applicant to be used to offset the costs of the
14 project. The rulemaking for any rule required under this
15 subsection (c) must be initiated under Section 5-40 of the
16 Illinois Administrative Procedures Act within 120 days after
17 the effective date of this amendatory Act of the 95th General
18 Assembly.

19 (Source: P.A. 94-793, eff. 5-19-06.)

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.